

ESTTA Tracking number: **ESTTA389177**

Filing date: **01/19/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Mad Dogg Athletics, Inc.
Granted to Date of previous extension	01/19/2011
Address	2111 Narcissus Ct. Venice, CA 90291 UNITED STATES

Attorney information	Konrad K. Gatien Keats McFarland & Wilson, LLP 9720 Wilshire BoulevardPenthouse Beverly Hills, CA 90212 UNITED STATES kgatien@kmwlaw.com, dorme@kmwlaw.com Phone:(310) 248-3830
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### Applicant Information

Application No	85021307	Publication date	09/21/2010
Opposition Filing Date	01/19/2011	Opposition Period Ends	01/19/2011
Applicant	Rachel Sossen Suite 308 3839 Bell Boulevard Bayside, NY 11361 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Consulting services in the fields of fitness and exercise; Physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; Providing fitness and exercise studio services, namely, pilates instruction and training; Providing information in the field of exercise training; Providing information on physical exercise
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### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2173202	Application Date	04/22/1996
Registration Date	07/14/1998	Foreign Priority Date	NONE


Word Mark	SPIN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1992/01/00 First Use In Commerce: 1992/01/00 stationary exercise bicycles Class 041. First use: First Use: 1992/01/00 First Use In Commerce: 1992/01/00 physical fitness instruction

U.S. Registration No.	2336564	Application Date	11/05/1997
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	SPINERVALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1997/10/01 First Use In Commerce: 1997/10/01 Prerecorded video cassettes featuring exercise and general physical fitness instruction		

U.S. Registration No.	3521332	Application Date	02/05/2007
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	SPIN FITNESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 exercise equipment, namely, resistance training machines, elastic tubing, exercise mats, exercise blocks, exercise straps, exercise balls, stability balls, weighted resistance products in the nature of resistance cables, exercise weights		

U.S. Registration No.	3661476	Application Date	09/13/2007
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Registration Date	07/28/2009	Foreign Priority Date	NONE
Word Mark	SPINFITNESS		
Design Mark			
Description of Mark	The mark consists in part of two stylized semi-circles appearing above and below the wording.		
Goods/Services	Class 028. First use: First Use: 2009/01/06 First Use In Commerce: 2009/01/06 EXERCISE EQUIPMENT, NAMELY, WEIGHT TRAINING MACHINES		

U.S. Registration No.	3334266	Application Date	03/13/2007
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	SPINGYM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/08/05 First Use In Commerce: 1999/08/05 Prerecorded video cassettes, DVDs, audio cassettes, and compact discs featuring exercise and general fitness instruction Class 041. First use: First Use: 1999/08/05 First Use In Commerce: 1999/08/05 Physical fitness instruction		

U.S. Registration No.	3521333	Application Date	02/05/2007
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	SPIN PILATES		

Design Mark	<b>SPIN PILATES</b>
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2007/10/31 First Use In Commerce: 2007/10/31 exercise equipment, namely, resistance training machines


U.S. Registration No.	3528187	Application Date	02/05/2007
Registration Date	11/04/2008	Foreign Priority Date	NONE
Word Mark	SPIN PILATES		
Design Mark	<b>SPIN PILATES</b>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2007/06/30 First Use In Commerce: 2007/06/30 providing physical fitness instruction and consultation in the fields of health and exercise; health club services, namely, providing instruction and equipment in the field of physical exercise		

U.S. Application No.	77258354	Application Date	08/17/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPIN YOGA		

Design Mark	<b>SPIN YOGA</b>
Description of Mark	NONE
Goods/Services	Class 028. First use: Exercise equipment, namely, resistance training machines, elastic tubing, exercise mats, exercise blocks, exercise straps, exercise weight cuffs, weighted resistance bands and tubes


U.S. Application No.	77258152	Application Date	08/17/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPIN YOGA		
Design Mark	<b>SPIN YOGA</b>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: Providing physical fitness instruction and consultation in the fields of health and exercise; health club services, namely, providing instruction and equipment in the fields of health and exercise		

U.S. Application No.	85106705	Application Date	08/12/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPINCIRCUIT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1999/08/31 First Use In Commerce: 1999/08/31 prerecorded audio tapes, video tapes, audio cassettes, video cassettes and compact discs featuring exercise and general physical fitness instruction Class 028. First use: First Use: 1998/09/30 First Use In Commerce: 1998/09/30 exercise equipment, namely, stationary exercise bicycles and weight lifting machines Class 041. First use: First Use: 1998/09/30 First Use In Commerce: 1998/09/30 physical fitness instruction

U.S. Application No.	77278794	Application Date	09/13/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPINFITNESS		
Design Mark			
Description of Mark	The mark consists, in part, of two stylized semi-circles appearing above and below the wording.		
Goods/Services	Class 041. First use: PROVIDING INSTRUCTION AND CONSULTATION IN THE FIELDS OF PHYSICAL FITNESS AND EXERCISE		

U.S. Application No.	77099703	Application Date	02/05/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SPIN FITNESS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: providing physical fitness instruction and consultation in the fields of health and exercise; health club services, namely providing instruction and equipment in the fields of health and exercise

Attachments	75384932#TMSN.gif ( 1 page )( bytes ) 77099698#TMSN.jpeg ( 1 page )( bytes ) 77278749#TMSN.jpeg ( 1 page )( bytes ) 77129524#TMSN.jpeg ( 1 page )( bytes ) 77099722#TMSN.jpeg ( 1 page )( bytes ) 77099724#TMSN.jpeg ( 1 page )( bytes ) 77258354#TMSN.jpeg ( 1 page )( bytes ) 77258152#TMSN.jpeg ( 1 page )( bytes ) 85106705#TMSN.jpeg ( 1 page )( bytes ) 77278794#TMSN.jpeg ( 1 page )( bytes ) 77099703#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 6 pages )(257934 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/kkg/
Name	Konrad K. Gatien
Date	01/19/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In re* Application No. 85/021,307

Published in the Official Gazette on September 21, 2010

Mad Dogg Athletics, Inc.	)	
	)	Opposition No. _____
Opposer,	)	
	)	
v.	)	
	)	
Rachel Sossen,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Mad Dogg Athletics, Inc. (“Opposer”), a California corporation, having its principal place of business at 2111 Narcissus Court, Venice, California, 90291, believes that it is and will be damaged by the registration of the above-identified mark (“Applicant’s Mark”), and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges:

1. Opposer is the owner of all rights, title and interest in and to the following federally registered trademarks, among others: SPIN (Reg. No. 2173202), SPINERVALS (Reg. No. 2336564), SPIN FITNESS (Reg. No. 3521332), SPINFITNESS (Reg. No. 3661476), SPINGYM (Reg. No. 3334266) and SPIN PILATES (Reg. No. 3521333 and 3528187) in connection with providing goods and services for health and fitness. In addition, Opposer is the owner of all rights, title and interest in and to the following common law trademarks, among others: SPIN CIRCUIT, SPIN FITNESS, SPINFITNESS and SPIN YOGA. Opposer’s federally registered trademarks and common law trademarks are hereinafter referred to collectively as the “SPIN Family of Marks.”



2. Opposer's SPIN Family of Marks contains the trademark SPIN as the recognizable common characteristic of the family.

3. Opposer's SPIN Family of Marks are composed and used in such a way that the public associates not only the individual marks, but also the common characteristic of the family, with Opposer.

4. Since at least as early as August 1999, Opposer has used its SPIN Family of Marks in connection with the advertising and sale of fitness goods and services.

5. The United States Patent and Trademark Office has recognized Opposer's exclusive right to use its SPIN Family of Marks by issuing the above-referenced registrations for said marks.

6. Opposer's registrations for said marks are valid and subsisting and provide *prima facie* evidence of Opposer's ownership of, and exclusive right to use, Opposer's SPIN Family of Marks in commerce.

7. Opposer has developed a well-known business reputation throughout the United States in the health and fitness industry, and Opposer's SPIN Family of Marks has been and continues to be widely publicized through substantial advertising and promotion.

8. As a result of the substantial advertizing and extensive sales of goods and services offered under Opposer's SPIN Family of Marks by Opposer and its licensees, the marks have become well-known and distinctive, indicating Opposer as the exclusive source of origin of such goods and services.

9. Opposer's SPIN Family of Marks are valuable symbols of Opposer's business and goodwill and any infringement or dilution thereof is likely to cause irreparable harm to Opposer.

10. Notwithstanding Opposer's longstanding prior established rights in its SPIN Family of Marks, Applicant filed on April 22, 2010, its application for registration of Applicant's

Mark for use in connection with highly-related services, namely, “Consulting services in the fields of fitness and exercise; Physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; Providing fitness and exercise studio services, namely, pilates instruction and training; Providing information in the field of exercise training; Providing information on physical exercise” in International Class 041.

11. Opposer has used its SPIN Family of Marks continuously on or in connection with its fitness goods and services in interstate commerce since long prior to the date Applicant filed her trademark application for Applicant’s Mark with the United States Patent and Trademark Office.

12. Applicant’s Mark, SPIN TO BE THIN, contains as its prefix, and the dominant portion of its mark the term SPIN, which is the common characteristic of Opposer’s SPIN Family of Marks.

13. Because Applicant’s Mark contains the asserted family characteristic, SPIN, purchasers familiar with Opposer’s SPIN Family of Marks are likely to believe that Applicant’s Mark is but another member of that family.

14. Applicant’s Mark is confusingly similar to each of Opposer’s SPIN Family of Marks and to the SPIN Family of Marks as a whole.

15. Applicant had constructive knowledge of Opposer’s prior rights in Opposer’s SPIN Family of Marks well before Applicant filed her application for Applicant’s Mark.

16. On information and belief, Applicant had actual knowledge of Opposer’s prior rights in Opposer’s SPIN Family of Marks well before Applicant filed her application for Applicant’s Mark.

**COUNT I**  
**LIKELIHOOD OF CONFUSION - §2(d)**

17. Applicant's Mark so resembles each of Opposer's SPIN Family of Marks and the SPIN Family of Marks as a whole so as to be likely to cause confusion, mistake, and/or deception when used on or in connection with the services identified in the application for Applicant's Mark, with consequent injury to Opposer, to the trade and to the public.

18. Applicant's services identified in the application for Applicant's Mark are so closely related to the goods and services offered under Opposer's SPIN Family of Marks that the public is likely to be confused, to be deceived and to assume erroneously that Applicant's services are those of Opposer or that Applicant is in some way connected with or sponsored by or affiliated with Opposer, when in fact Applicant is not, with consequent injury to Opposer, to the trade and to the public.

19. Likelihood of confusion in this case is enhanced by the fact that prospective purchasers of Applicant's services are likely to associate Applicant's Mark with goods and services sold, approved or endorsed by Opposer under its SPIN Family of Marks; moreover, individuals purchasing Applicant's services are prospective purchasers of Opposer's goods and services.

20. Applicant is not affiliated or connected with nor is she approved, endorsed or sponsored by Opposer.

21. Similarly, Opposer has not approved any services sold or intended for sale by Applicant under Applicant's Mark, nor has Opposer granted Applicant permission to use said mark.

22. If Applicant were granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of said mark. Such registration would be a source of damage and injury to Opposer.

23. The registration of Applicant's Mark, would give color of exclusive statutory rights to Applicant in violation and derogation of the long-standing, prior, superior and exclusive rights of Opposer, and would support and assist Applicant in confusing and misleading the purchasing public.

WHEREFORE, Opposer prays that its opposition be sustained and that registration be denied.

Respectfully submitted,

Dated: January 19, 2011



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Konrad K. Gatien  
Keats McFarland & Wilson LLP  
Attorneys for Opposer  
Mad Dogg Athletics, Inc.  
9720 Wilshire Blvd., Penthouse Suite  
Beverly Hills, California 90212  
Telephone: (310) 248-3830

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2011, I served the following document(s):

1. Notice of Opposition

upon Applicant named below:

Rachel Sossen  
3839 Bell Blvd., Suite 308  
Bayside, NY 11361

by placing a true and correct copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail, for collection and mailing with the United States Postal Service on the same date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 19, 2011, at Beverly Hills, California.

  
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Konrad K. Gatien